

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

AARON BORELLI,

Petitioner,

vs.

MICHAEL B. MYERS,

Respondent.

**8:20CV528**

**MEMORANDUM AND ORDER**

This matter comes for initial review of a § 2241 habeas petition filed by Petitioner. He is a pretrial detainee who complains about a variety of things. I have taken judicial notice of his state court file. I conduct this initial review of the petition pursuant to 28 U.S.C. § 2241 and Rule 1(b) of the *Rules Governing Section 2254 Cases in the United States District Courts* which allows the court to apply Rule 4 of those rules to a section 2241 action.

The petition attacks the pretrial detention of Petitioner and without spending more time than necessary, it is sufficient to write that: “[F]ederal habeas corpus does not lie, absent ‘special circumstances,’ to adjudicate the merits of an affirmative defense to a state criminal charge prior to a judgment of conviction by a state court.” *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 489 (1973). After taking judicial notice of the pending criminal matter, no such special circumstances are shown here.

Because “the detention complained of arises from process issued by a state court,” Petitioner must obtain a certificate of appealability. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b)(1); *see also Hoffler v. Bezio*, 726 F.3d 144, 153 (2d Cir. 2013) (collecting cases of courts that ruled a state prisoner who petitions for habeas relief under 28 U.S.C. § 2241 must obtain a certificate of appealability). The standards for certificates (1) where the district court reaches the merits or (2) where the district

court rules on procedural grounds are set forth in *Slack v. McDaniel*, 529 U.S. 473, 484-485 (2000). I applied the appropriate standard and determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that:

1. The petition for writ of habeas corpus under § 2241 (Filing 1) is dismissed without prejudice. No certificate of appealability has been or will be issued.

2. The court will enter judgment by separate document.

Dated this day 21<sup>st</sup> of January, 2021.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge